



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Power Supply Contract Between the City of Lodi and Cottage Bakery

MEETING DATE: December 17, 1997

SUBMITTED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt the attached Resolution and authorize the City Manager to approve the Power Supply Contract between the City of Lodi (City) and Cottage Bakery (Customer).

BACKGROUND: The Customer has been doing business in the City since the early 1950's. For the past several months the City has been working with the Customer on the electrical needs for expansion of the Bakery plant located on Neuharth Drive in Lodi. The Customer has recently materially increased its electric load and work force. Their intentions are to make further significant changes at their plant location in Lodi. Their current and future increases will increase its electric load by over 100% and workforce by a minimum of 50 employees as plant expansion occurs.

The City worked with the Customer on providing incentives to facilitate the expansion of the plant. The contract is similar with previous policy where the City has provided rate incentives for existing customers who permanently and materially increased electric load and or workforce.

FUNDING: Not Applicable

Alan N. Vallow
Electric Utility Director

Prepared by Jim Doyle, Manager, Rates and Resources
ANV/JD/lst

cc: City Attorney

Approved

H. Dixon Flynn
City Manager

December 8, 1997

**RATE AGREEMENT
BETWEEN
COTTAGE BAKERY
AND
THE CITY OF LODI**

This Agreement is made by and between COTTAGE BAKERY ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory rate schedule assignment for this Customer.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, Customer is a producer of frozen and other bakery goods which is operating in the City; and

WHEREAS, Customer is installing additional refrigeration and plant facilities; and

WHEREAS, Customer is bringing new employment to the City; and

WHEREAS, City desires to supply the Customer's total load at secondary voltage (less than 12,000 volts) and provide Customer with a contract rate; and

WHEREAS, City desires to provide the Customer an economic incentive in the form of a discounted electric rate in return for creating additional business with new electric load in the City.

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Cottage Bakery

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- 1.4 "Facility" is the Customer's facility located at 40 Neuharth Drive, Lodi, California.
- 1.5 "Account" is the Customer's Account Number 109.01-61.00 or its successor Customer Account Number(s).
- 1.6 "Parties" are collectively Customer and City.
- 1.7 "kW" is a kilowatt, a demand charge billing unit.
- 1.8 "kWh" is a kilowatt-hour, an energy charge billing unit.
- 1.9 "Billing Cycle" is the monthly bill.
- 1.10 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.
- 1.11 "Energy Multiplier" is the sum of 1.000 plus the change in the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics for the previous calendar year. This Energy Multiplier will be in effect for the following calendar year for bills rendered on and after February of the applicable year. Succeeding yearly Energy Multipliers will be the product of the previous Energy Multiplier and the sum of 1.000 plus the change in the Consumer Price Index for the previous calendar year. In no case will the Energy Multiplier be less than 1.000.
- 1.12 "12 Month Review Period" is period of November through October for the individual years covered in this Agreement.
- 1.13 "Actual Load Factor" is the ratio of actual kWh used during the 12 Month Review Period to the amount that would have been used had the Customer consumed energy uniformly during the 12 month Review Period at the rate of maximum kW measured during the 12 Month Review Period.

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- 1.14 "Significant Load Increase" is a permanent measurable change in electric operations, verified by the City, which results in a minimum of 20% increase in kW within a 12 month review period.

Section 2. Rate Application

- 2.1 The Account shall be billed a minimum cumulative total of \$1,000,000 for the term of the Agreement.
- 2.2 The billing cycle charge for the Customer shall be as follows:

**First day of first full month after City Council approval and Parties signatures
through December 31, 2001**

Customer Charge:	\$ 125.00
Demand Charge:	\$ 0.00 per kW
Energy Charge	
First 270,000 kWh	\$ 0.08000 per kWh
Over 270,000 kWh	\$ 0.05200 per kWh less the Economic Development Credit times the Energy Multiplier
Economic Development Credit:	\$ 0.0002 per kWh per Full Time Equivalent (FTE) employee up to a maximum of \$ 0.01000 per kWh. Initial and subsequent FTE totals may be updated at six-month intervals. The Electric Utility Department may update the FTE total at more frequent intervals when in its sole judgment an update is appropriate.
Energy Multiplier:	as defined in Section 1.11 above
Actual Load Factor Charge:	If Customers Actual Load Factor falls below 65% over a 12 Month Review Period, Customer shall pay an additional amount. The rate per kWh for the charge shall be calculated by 65% less Actual Load Factor % and the result multiplied by .08. The charge shall be the above result, expressed in dollar and rounded to the nearest fifth place, multiplied by the accumulated number of Over 270,000 kWh used during the 12 Month Review Period. If Customer has a significant load increase during the 12 month review period there shall be no Actual Load Factor Charge.

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Section 3. Term of Agreement

- 3.1 This Agreement shall be binding for bills rendered on or after the first day of the first full month after City Council approval and Parties signatures, and shall remain in effect subject to Paragraphs 3.2 and 3.3 below, for bills rendered through December 31, 2001.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.
- 3.3 Customer may terminate this Agreement, without cause and without the consent of the City provided Customer has paid \$1,000,000 to the City for electric power under the terms of this Agreement and Customer provides 30-day written notice to City of its intent to cancel this Agreement. Upon termination the Customer will be placed on any City of Lodi published non-contract, full service, rate schedule that the customer would otherwise qualify for.
- 3.4 Parties may mutually extend this Agreement from year to year beyond the original term of this Agreement.

Section 4. Force Majeure

- 4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence. The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.

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4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. Assignments

5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments

6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability

7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law

8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. Expenses of Enforcement

9.1 Any controversy arising from this Agreement or its breach shall be resolved by three

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arbitrators appointed as set out below:

- a) Within 20 days after notice by either party to the other requesting arbitration and stating the basis of the party's claim, one arbitrator shall be appointed by each party. Notice of the appointment shall be given by each party to the other when made.
- b) The two arbitrators shall immediately chose a third arbitrator to act with them. If a party fails to select an arbitrator within the time allowed or the two arbitrators fail to select a third arbitrator within 20 days after their appointment, on application by either party the additional arbitrator(s) shall be promptly appointed by the then presiding judge of the Superior Court of the State of California in and for the County of San Joaquin acting as an individual. The party making the application shall give the other party 20 days' notice of the application.

The arbitration shall be conducted under Code of Civil Procedure sections 1280-1294.2.

The hearing shall be held in San Joaquin County, California. All notices, including notices under Code of Civil Procedure section 1290.4, shall be given as provided in paragraph 12.2 of this Agreement.

Judgement upon the arbitration award may be rendered by any court having jurisdiction.

Until and unless the arbitrators and/or the court determine that one party is entitled to recover its costs of suit from the other party, each party shall bear the costs and fees charged by the arbitrator it appoints, and they shall jointly bear the costs and fees charged by the third arbitrator appointed either by the two arbitrators or by the court."

- 9.2 If either party files any action or brings any proceeding against the other arising from this Agreement, including a demand for arbitration, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorneys fees

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to be fixed by the arbitrator or by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgement. A party not entitled to recover its costs shall not recover attorneys fees. No sum of attorneys fees shall be included in calculating the amount of a judgement for purposes of deciding whether a party is entitled to its costs or attorney fees.

Section 10. Counterparts

10.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 11. Headings

11.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 12. Notices

12.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

12.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR
 CITY OF LODI
 1331 SOUTH HAM LANE
 LODI CA 95242-3995

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To Customer: COTTAGE BAKERY
PO BOX 1720
40 NEUHARTH
LODI CA 95241

Section 13. Non-waiver

13.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 14. Warranty of Authority

14.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

Section 15. Metering

15.1 Metering for billing purposes will be at the low voltage side of the transformer supplying power to Customer's Facility.

Section 16. Entire Agreement

16.1 This document contains the entire agreement between the Parties and as to the matters addressed by this document. It shall supercede any previous written agreements between these parties. Any inconsistent prior or contemporaneous oral agreement or understandings are void and shall not be used to modify this written Agreement.

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IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI, a Municipal Corporation

H. Dixon Flynn, City Manager


Date

ATTEST:

Alice M. Reimche, City Clerk

Date

APPROVED AS TO FORM:



Randall A. Hays, City Attorney

12-9-97

Date

COTTAGE BAKERY

Signature

Date

RESOLUTION NO. 97-207

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE POWER SUPPLY CONTRACT
WITH COTTAGE BAKERY

BE IT RESOLVED, that the Lodi City Council hereby approves the Power Supply Contract with Cottage Bakery; and

FURTHER RESOLVED, that the City Manager and City Clerk are hereby authorized to execute said Contract on behalf of the City.

Dated: December 17, 1997


I hereby certify that Resolution No. 97-207 was passed and adopted by the Lodi City Council in a regular meeting held December 17, 1997 by the following vote:

AYES: Council Members - Land, Mann, Pennino, Warner and Sieglock
(Mayor)

NOES: Council Members - None

ABSENT: Council Members - None

ABSTAIN: Council Members - None


ALICE M. REIMCHE
City Clerk